

# Tough Legislative Session

By Geoff Herman, Director of State  
& Federal Relations, MMA

There is the State of the Union address. There is the State of the State address. This is an article about the state of the relationship between Maine State government and the 492 plantations, towns and cities that are the state's municipal governments. To be sure, there were other high priority issues at play in the State House over the last winter and spring, but the fundamental nature of the state-municipal relationship was a central theme of the legislative session that just concluded, finally and thankfully, on July 10.

When the 126<sup>th</sup> Legislature was poised to convene last December, the article in the *Maine Townsman* that previewed the upcoming session focused on the municipal goal of protecting the core. From the municipal point of view, "protecting the core" meant shoring-up and shielding from further erosion the four primary systems of intergovernmental relationship where the state and municipalities work together in order to deliver fundamental governmental services to a common constituency. The four core systems Maine's municipal leaders were seeking to protect seven months ago, when this legislative session began, were:

- Municipal revenue sharing.
- State funding for K-12 public education.
- Transportation investments.
- Water-based infrastructure, including drinking water, wastewater and storm water management systems.

Unfortunately for local government, the core was not well protected this legislative session. For those with long memories, what was once a relatively healthy relationship of intergovernmental partnership has become

badly torn.

**Revenue sharing.** The Legislature's propensity to raid the municipal revenue sharing program in order to provide for state spending priorities moved to a deeper and unprecedented level this session. The revenue sharing distribution of \$65 million that will be provided in FY 2014 is about the same as the revenue sharing distribution that was provided a quarter of a century ago, in 1989, when \$64 million was distributed. The Legislature is now "transferring" (the technical word for raiding) well over 50% of the broad-based tax resources dedicated by law for property tax relief out of the revenue sharing program and into the state's General Fund each year. The table on P. 11 and chart on P. 12 describe the 43 year history of revenue sharing, including the 36 years when the Legislature abided by the state law governing the program, as well as the eight years when the Legislature has chosen to disregard this commitment. The trend is unmistakable: 20% cuts in 2010 leading to 30% cuts in 2012 leading to 55% cuts in 2014. The record clearly suggests that the Legislature is intent on backing away from long-established policies regarding the distribution of tax burden and the over-reliance on the property tax. At the same time, the towns and cities are told to tighten their belts.

A side-bar to this article on the subject of belt tightening is provided on P. 8.

**School funding.** When the legislative preview article was written last December, the total cost of providing an adequate public education, as measured by the Essential Programs and Services

school funding model (EPS), was \$1.996 billion, and the Legislature had appropriated \$910.4 million as the state share toward that total cost, or 45.61%.

Under the budget just adopted by the Legislature, two structural changes to the school funding calculation have been implemented.

First, the definition of the "total cost of K-12 education" is changed by expanding the funding model to include the "normal cost" of the teachers' retirement premium.

Second, that \$29 million premium payment has been shifted from a state government financial obligation to a local government financial obligation.

According to that change, the total cost of providing an adequate public education has increased to \$2.034 billion. The appropriated state share of the total cost for FY 14 under this



Sen. Richard Woodbury (Cumberland Cty.) and Rep. Gary Knight (Livermore Falls) were, respectively, the chief architect and the lead sponsor of an outside-the-lines, truly comprehensive tax reform proposal elegantly titled *An Act to Modernize and Simplify the Tax Code (LD 1496)*. This legislation injected some real electricity into the tax policy debates this session triggered by the Governor's proposed budget; tax policy debates which were otherwise pedestrian and bound as though with duct tape to the status quo.

budget is \$942 million, or 46.3%.

Transportation infrastructure. The Legislature also dipped its bucket into the municipal well to help pay for state transportation programs.

Similar to the municipal revenue sharing program, a fixed percentage of the Department of Transportation's total revenue budget for highway and bridge purposes has been dedicated to providing support revenue to Maine's towns and cities under the Local Road Assistance Program (LRAP). That percentage – approximately 10% – was established almost 15 years ago to create a dependable sharing system out of the more complicated but historical methodology used to determine the total LRAP allocation. For FY 2013, that system provided slightly over \$24 million a year for the towns and cities in Maine to invest in capital improvements to local roads or to leverage supplementary state contributions to invest in state roads in need of repair. As the chart on P. 12 demonstrates, the LRAP distribution has been remarkably static ever since the sharing system was established.

But that will change soon, to the municipal disadvantage. Under the Highway Fund budget enacted this session (LD 1480), the 10% sharing system will be cranked down to a 9% sharing system beginning a year from now. That reduction, which is a permanent change, yields approximately \$3 million more each year for the state's highway and bridge budget, but places the equivalent burden on local road programs.

Transportation and Water/Wastewater Investments. The fourth element of MMA's "protect the core" agenda focused on the capital investments the state makes in critical infrastructure that is the foundation supporting all forms of economic development. The core investments of municipal focus were for transportation-related maintenance and construction efforts as well as the infrastructure upgrades necessary to keep drinking water, wastewater and storm water facilities functioning in an optimal manner and in compliance with federal Clean Water Act standards. To that end, MMA advanced a \$100 million transportation bond (LD 16, *An Act To Authorize a General Fund Bond Issue to Invest in Transportation Infrastructure*) and strongly supported a pair of water-

## Belt Tightening & State-Related Municipal Services

Municipal revenue sharing has a number of tap roots. It was expressly created in 1972 to take the edge off the regressivity of the property tax, especially where the property tax burden is quite high.

Also by its timing, revenue sharing was obviously created to recognize the impacts of eliminating a significant component of the municipal tax base (the "inventory tax") and has been subsequently recognized for at least partially addressing the tax base reductions associated with a concentration of tax-exempt properties in many communities as well as the exemption of commercial and industrial personal property from the local tax base, which began in 2008.

And revenue sharing was most certainly created to recognize that local governments are asked to perform a number of services that generally benefit the state but are more efficiently provided at the local level.

In an effort to inform municipal financial planning discussions in the wake of the recently enacted revenue sharing cuts, a number of municipalities have requested a list of non-mandated services commonly performed by local governments for the state. The first list that follows depicts functions that are not expressly required to be performed by municipalities under law. That list is followed by a list of the functions that municipalities are mandated to perform for the state's general benefit.

Disclaimer: It should be noted that these lists are incomplete and are not being provided as legal advice. Before limiting or discontinuing any services, municipalities are advised to consult with their municipal attorney or the Maine Municipal Association's Legal Services Department.

### NON-MANDATED FUNCTIONS MUNICIPALITIES PROVIDE FOR THE STATE

- Vehicle registrations
  - Automobile
  - Watercraft
  - Snowmobile
  - All-Terrain Vehicles
- Hunting and fishing licenses, permitting pursuant to Inland Fisheries and Wildlife programs
- Partnership systems
  - Financially partnering with reconstruction of state roads
  - Universal Waste system recycling

Municipalities have long registered vehicles and issued hunting, fishing and other IF&W permits. Current law does not require municipalities to provide "agent" services. Thus, if they do not, they are not required to perform these tasks. These are state licenses and state registrations. Municipalities have performed these functions as partners with the state largely in recognition of how much more convenient it is for citizens to go to their town or city hall to receive these services rather than travel to a state office. (Municipalities do receive fees for many of these services.) In recent years, efforts have been made by the state to provide other venues to obtain some of these services, including through certain retail establishments and on the Internet.

Technically, Maine's towns and cities may choose whether or not to employ municipal personnel to act as agents of the state in these areas. Municipalities may also choose to issue registrations for selected categories of vehicles, and licenses for certain activities, but not others. With that said, after choosing to act as a state agent for licenses and registrations, town clerks and other personnel must perform the functions and follow the protocols issued by the Commissioner of the Department of Inland Fisheries and Wildlife or the Commissioner of the Department of Transportation. But the initial choice is the municipality's to make.

Municipal partnerships with the Maine Department of Transportation (MDOT) to repair or rebuild state roads are also optional, though lack of municipal involvement may lead MDOT to lower the project in question on its list of priorities. Municipalities are also not required to manage universal waste collection-for-recycling programs for such items as computers, cathode ray tubes, fluorescent bulbs, and various mercury-containing products at transfer stations or solid waste facilities.

## MANDATED FUNCTIONS MUNICIPALITIES PROVIDE FOR THE STATE

What follows is an incomplete list of municipal activities that are required to be performed by municipalities under the law to further a generalized, statewide benefit. It should be noted that this list does not attempt to cover the much longer list of municipal mandates; rather, the attempt is to identify those mandated municipal functions that provide services that, at least arguably, are provided for the state and its citizens.

- Administrative functions
- Statewide elections
  - Calling, holding and reporting results
  - Registering voters
- Marriage licensing
- Vital statistics management
- K-12 Public education, generally
- General Assistance
- Land Use
  - Subdivision review
  - Shoreland zoning management
  - Junkyard licensing
- Public Safety
  - Animal control
  - Building inspection/occupancy permitting
  - Emergency Management
  - Local Health Officers
- Public Works
  - Maintenance of state aid roadways
  - Solid waste management and recycling
  - Septage management
  - Cemetery maintenance/veterans' graves
- General Licensing
  - Plumbing inspection and permitting of subsurface wastewater systems
  - Dog and dog kennel licensing
  - Wharves, weirs, piers, piling installations
  - Beano/bingo amusements
  - Bowling alleys, shooting galleries, pool and billiard rooms
  - Closing-out sales/going out of business sales
  - Innkeeper/lodging house operations
  - Off Track betting facilities
  - Pawnbroker operations
  - Pinball machine operations
  - Public exhibitions, circuses, amusement shows, etc.
  - Roller skating rinks
  - Special Amusements (live music, dancing, entertainment where alcohol is served)

related bond proposals (LD 1010, *An Act to Authorize a General Fund Bond Issue to Ensure Clean Water* and LD 1455, *An Act to Authorize a General Fund Bond Issue to Ensure Clean Water and Safe Communities*).

Unfortunately, the Legislature has pushed all decisions on major capital borrowing into a future legislative session, so no substantive action will be taken on these important capital investments at this time.

**What ever happened to agreements made in good faith and codi-**

**fied in statute?** Upon the close of this legislative session, municipal officials from across the state are undoubtedly wondering what happened to the dependability of agreements established over a handshake between state and local governments. Why is it that the Legislature breaks its commitments to local government so often? What is it about the intergovernmental shared-resource systems, which are designed to operate dependably and without legislative interference, that makes them so undependable and conspic-

uously subject to legislative manipulation? Why have these agreements been treated so respectfully for many decades by previous legislatures only to be dishonored over the last six years?

Any number of reasons are offered. Here are few that we heard over the last seven months.

### Legislature over commits to everyone.

According to this explanation of the problem, the Legislature simply establishes commitments too easily, too readily, and for too many purposes, without due consideration of the long-term consequences. Chalk it up to short-term thinking or short-term political considerations or an all-too-human interest to please or the phenomenon of making unkeepable promises in order to make the enactment of a difficult policy change more palatable. Whatever the proximate causes of establishing such commitments, the simple consequence of this overindulgence in generosity is that sooner or later a certain Piper must be paid. According to this explanation, only very naïve people would believe legislative commitments are bankable products.

Medicaid spending crowd-out. This explanation was often provided by Republicans on the Appropriations Committee to explain the Legislature's incapacity to allow municipal revenue sharing to be distributed as provided



*Neither Rep. Mike Carey nor Rep. Nate Libby, who serve on the Appropriations Committee and Taxation Committee, respectively, were shy this session about bringing the specific experiences of their home City of Lewiston to the debate on revenue sharing and what it means in real life to shift a greater burden of governmental spending onto the property taxpayers as was being proposed by Governor LePage. As importantly to the debate, both legislators used their in-depth knowledge of Lewiston's budget issues not to make any unique claim or a special case but, rather, to underscore and better explain the situation facing municipal governments large and small across the state.*

## Municipal Mandates, Enacted and Not Enacted

It is not uncommon for a number of bills identified as significant municipal mandates to be considered during any legislative session. Many of the proposed mandates of serious municipal concern that received a favorable Committee recommendation were ultimately defeated in the normal back-and-forth decisions of the House and the Senate. A good example of an unfunded mandate that failed final enactment is LD 977, *An Act To Restore Uniformity to the Maine Uniform Building and Energy Code*. LD 977 would have expanded the application of the Maine Uniform Building and Energy Code (MUBEC) throughout the state and significantly expanded municipal enforcement obligations for the towns between 2,000 and 4,000 in population.

Dozens of bills identified as unfunded state mandates were enacted by the Legislature, but most of those bills were identified as mandates for technical reasons, even though the municipal fiscal impacts were truly "insignificant" in nature. Setting aside the many education-related mandates that are routinely enacted without much in the way of resistance by the public school lobby, four municipally related unfunded mandates of some significance were poised to be enacted in the final days of the legislative session. As noted below, two of those mandates failed to garner sufficient support to be finally enacted, one of those bills was successfully vetoed by the Governor, and one was enacted.

- **LD 235 – Firefighters and "Tone-to-Tone" Workers' Compensation.** LD 235 expands the Workers' Compensation law to provide a "rebuttable presumption" that a firefighter or EMS provider who gets injured after receiving an emergency tone or call is injured in the course of employment, even if the injury occurs at home or some other place entirely outside the control of the municipal employer. The bill's fiscal note identifies it as a potential state unfunded mandate with significant statewide local costs.

On the last day of the legislative session, the Legislature failed to garner sufficient votes to enact LD 235.

- **LD 274 - *An Act To Preserve and Protect Ancient Burial Grounds and Burial Grounds in Which Veterans are Buried.*** Current law requires municipalities to maintain "in good condition and repair" the graves, headstones, monuments and markers of veterans who served during any war time period in all cemeteries within the municipality. LD 274 requires maintenance for the graves of all veterans, whether or not the veteran served during a war time period. The most costly element of the legislation is that it establishes certain minimum "good repair" standards, including grass height limits of between 1.5 and 2.5 inches, keeping the inscriptions legible, making sure the headstones are always vertically plumb and horizontally aligned, etc. The bill's fiscal note describes it as an unfunded mandate with significant statewide local costs.

On the last date of the legislative session, LD 274 was overwhelmingly supported in both the House and the Senate. Therefore, the new cemetery maintenance rules will be applied without any financial support from the state.

- **LD 1133 – *Municipal Employees – All for Cause.*** Current law provides that certain municipal employees appointed directly by a board of selectmen are "at will" employees. LD 1133 mandates that all municipal employees are categorized as "for cause" employees and entitled to heightened job protection and due process proceedings in the event of termination from employment. The bill's fiscal note describes it as an unfunded mandate of more moderate scope because this bill does not have implications for the larger municipalities operating under a town or city manager system.

On the last day of the legislative session, the Legislature failed to garner sufficient votes to enact LD 1133.

- **LD 1342 - *An Act To Ensure Just and Reasonable Sewer Utility Rates.*** LD 1342 established a process to ask sewer districts to agree to mediation over proposed sewer rate increases upon receipt of a petition signed by at least 15% of the customers of a sewer utility, or 1,000 customers, whichever is less. Since the bill did not require the sewer district to ultimately agree to mediation, it was not considered a state mandate even though it created a right for customers to formally petition the sewer district when rate increases are being proposed. As municipal officials are aware, a petition process established by statute necessarily entails administrative petition verification and certification protocols.

The Legislature passed this bill to be enacted but Gov. LePage issued a successful veto of the bill on June 24.

by law, not to mention a slew of other commitments to local governments, property taxpayers and others. The observation is that the state's Medicaid program, known as MaineCare, has been expanded to provide health care insurance to populations at higher income levels than the minimum federal requirements, and those decisions to expand that program have sucked-up the state's financial capacity to pay for core governmental services. Therefore, "sharing" systems like municipal revenue sharing get crowded out.

*Unsustainable income tax cuts.* An alternative explanation often provided by Democrats sitting on either the Taxation or Appropriations Committee was the unsustainable nature of the income tax cuts that were adopted by the Legislature as part of the 2011 state budget. That income tax cut package reduced available state revenue for the FY 2014-15 biennium by about \$350 million, which is almost exactly the value of the cuts to the municipal revenue sharing program and other property tax relief programs proposed by Gov. LePage.

If something is "crowding out" the Legislature's capacity to meet its commitments to local government in the areas of property tax relief, school funding, and road funding, one need look no further than the income tax cuts enacted in 2011 according to this explanation.

*Term limits, lack of legislative ownership of the long-standing commitments.* This theory is based on the observation that legislators today do not seem to possess the same respect for the long-standing commitments established and long-respected by their

## LEGISLATIVE TRANSFERS OUT OF REVENUE SHARING (1972 - 2013)

	Calculated Revenue Sharing Distribution	Legislative Transfer	Actual Revenue Sharing Distribution	Transfer as % of Calculated Rev Share Dist	% Actual Distribution
1972	2,900,000		2,900,000	0%	100%
1973	3,700,000		3,700,000	0%	100%
1974	6,200,000		6,200,000	0%	100%
1975	8,000,000		8,000,000	0%	100%
1976	9,870,130	370,130	9,500,000	4%	96%
1977	9,900,000		9,900,000	0%	100%
1978	12,700,000		12,700,000	0%	100%
1979	14,100,000		14,100,000	0%	100%
1980	15,609,880		15,609,880	0%	100%
1981	17,934,892		17,934,892	0%	100%
1982	19,654,260		19,654,260	0%	100%
1983	21,547,832		21,547,832	0%	100%
1984	27,579,003		27,579,003	0%	100%
1985	35,658,816		35,658,816	0%	100%
1986	41,399,922		41,399,922	0%	100%
1987	49,636,300		49,636,300	0%	100%
1988	56,920,102		56,920,102	0%	100%
1989	63,757,298		63,757,298	0%	100%
1990	60,826,462		60,826,462	0%	100%
1991	62,254,009		62,254,009	0%	100%
1992	64,939,137	12,100,000	52,839,137	19%	81%
1993	67,128,500	6,000,000	61,128,500	9%	91%
1994	66,325,845		66,325,845	0%	100%
1995	69,896,500		69,896,500	0%	100%
1996	72,704,600		72,704,600	0%	100%
1997	77,696,000		77,696,000	0%	100%
1998	89,490,000		89,490,000	0%	100%
1999	96,174,000		96,174,000	0%	100%
2000	107,116,000		107,116,000	0%	100%
2001	109,481,753		109,481,753	0%	100%
2002	100,610,139		100,610,139	0%	100%
2003	102,311,399		102,311,399	0%	100%
2004	110,663,051		110,663,051	0%	100%
2005	117,609,820		117,609,820	0%	100%
2006	123,722,881	2,335,918	121,386,963	2%	98%
2007	128,330,756	6,951,935	121,378,821	5%	95%
2008	135,819,468	2,695,409	133,124,059	2%	98%
2009	123,748,797	2,789,719	120,959,078	2%	98%
2010	122,873,014	25,400,000	97,473,014	21%	79%
2011	130,880,200	37,724,748	93,155,452	29%	71%
2012	137,225,178	40,350,000	96,875,178	29%	71%
2013	138,109,890	44,270,000	93,839,890	32%	68%
2014*	138,306,246	73,306,246	65,000,000	53%	47%
2015*	145,949,391	85,949,391	60,000,000	59%	41%

predecessors, or maybe they don't even know about the deep roots of these commitments. According to this theory, mandatory term limits along with natural legislative turnover and

a growing societal tendency toward short-term attention spans has led to a reduction in the depth of institutional memory among lawmakers. Commitments struck in 1972 (revenue shar-

ing) and 1984 (55% school subsidy) and 1987 (the modern Circuitbreaker program) and 1999 (local road assistance as a percentage of DOT funding) and even as recently as 2004 (55% school funding as a voters' directive) are now considered passé, old-fashioned, out-of-date and potentially irrelevant. According to this theory, a legislative perspective is emerging that suggests long-standing sharing arrangements between the state and local government do not deserve to be treated any differently than annual appropriations.

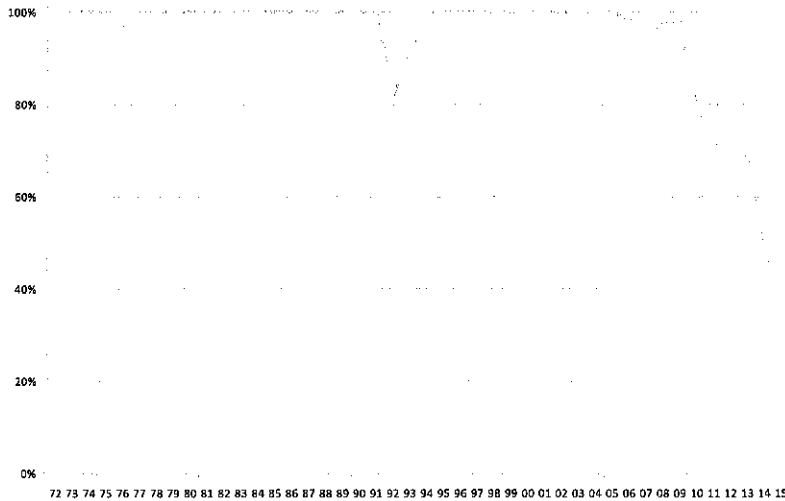
**Beyond the Core: the rest of MMA's legislative agenda.** Even though MMA's primary legislative agenda was to protect the core intergovernmental financing systems, the Association's Legislative Policy Committee developed six separate legislative proposals to be advanced for consideration this legislative session. The success rate was 50-50. A report card on that part of the legislative agenda follows this article.

*Carryover bills and study groups.* In a separate article, Kate DuFour chronicles the bills of greatest municipal interest that have been carried over to the 2014 legislative session, along with a half-dozen working groups that were formally established this session to tackle some thorny issues carrying substantial municipal impact.

*Municipal mandates, enacted and not-enacted.* The creation of new unfunded

## % of Local Government Funds Established by Statute Actually Distributed as Municipal Revenue Sharing

1972 - 2015



MMA is indebted to Sen. Brian Langley (Hancock Cty.) and Rep. Sheryl Briggs (Mexico), who each gave their name this session to allow the distribution of the Legislative Bulletin in the State Senate and State House, respectively. The Bulletin can sometimes throw a punch or two, experiment with a far-flung analogy, or express a sharp dose of skepticism. For these reasons and more, it is undoubtedly the case that Sen. Langley and Rep. Briggs take some heat from time to time for their willingness to let yet another irascible voice be heard in the State House. For all of that and more, many thanks from MMA.

state mandates on local government is always a concern for municipal leaders. More than a few significant mandates were in the legislative pipeline this session, but most failed to make it entirely through the process. A number of bills designated as significant municipal mandates were taken up by the Legislature on the final day of the legislative session. A sidebar to this article provides examples of the unfunded municipal mandates of the 2013 legislative session in three categories: an unfunded mandate that was ultimately enacted, a mandate that was enacted but successfully vetoed by the Governor, and a couple of mandates that were nearly adopted but did not garner the necessary two-thirds vote in both the House and Senate to absolve the state of any funding responsibility, and thus "failed enactment."

**New Laws.** Over 1,570 separate legislative initiatives were introduced to the Legislature this session. MMA identified 500 of those bills as having some direct impact on municipal government, or 32% of the total. 140 of those municipally related bills were ultimately enacted this session. In the New Laws article, all those enacted bills are listed according to the legislative joint standing committee that considered them, along with a description of each bill.

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Of the nearly 150 newly enacted laws that affect local government much of the change initiated by this legislation (with the noted exception of the state budget) is mainly corrective, clarifying or even ministerial in nature. Except for the years that are cited, the cover of this edition of the Maine Townsman could easily have been the cover of the May 1990 edition, with the banner headline "Budget Shortfall Dominates Legislative Session".

Yogi Berra had it right. It's déjà vu all over again. 

## LOCAL ROAD ASSISTANCE PROGRAM FUNDING HISTORY

(FY 1999 – FY 2015)

FY	Road Aid
1999	\$19,569,918
2000	\$19,511,892
2001	\$22,149,998
2002	\$22,703,166
2003	\$22,776,821
2004	\$21,794,644
2005	\$21,602,936
2006	\$22,826,176
2007	\$25,628,606
2008	\$26,091,053
2009	\$25,827,695
2010	\$24,707,371
2011	\$27,798,321
2012	\$23,434,666
2013	\$24,029,944
2014	\$23,072,983
2015*	\$20,111,535

Source: Office of Fiscal and Program Review

\*The loss of state aid is due to the reduction in the municipal share of the Department of Transportation revenues from approximately 10% to 9%.

## NEW OPPORTUNITIES FOR MUNICIPAL STREET LIGHT PROGRAMS

The primary impact for municipalities this legislative session came by way of the two-year state budget. By comparison, most of the non-budgetary legislation was much less substantive. One exception is the legislation to afford municipalities authority over their street light programs, which was quite substantive. A description of that legislation can be found under LD 1559 in the Energy, Utilities and Technology section of the New Laws article. Very capably sponsored by Rep. Mary Nelson of Falmouth, three municipal officials also deserve credit for creating these opportunities to modify and exert greater municipal control over your town or city's street light system: Falmouth Town Manager Nathan Poore, Rockland City Councilor Larry Pritchett, and Tex Haeuser, Director of Planning and Economic Development for the City of South Portland and Legislative Policy Committee Chair for the Maine Association of Planners. After two failed attempts over the last decade, this carefully constructed and highly detailed version made its way into law as part of the Omnibus energy bill.

